CLERK'S COPY

# TRANSCRIPT OF RECORD

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 57

THE UNITED STATES OF AMERICA, PETITIONER

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 12, 1946
CERTIORARI GRANTED APRIL 29, 1946

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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## No. 57

## THE UNITED STATES OF AMERICA, PETITIONER

vs.

## ATLANTIC COAST LINE RAILROAD COMPANY

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

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3 In United States District Court, Eastern District of Virginia

*Petition*

Filed April 24th, 1944

*To the Honorable Judge of the District Courts for the Eastern District of Virginia:*

Your petitioner, with its legal principal office in Petersburg, in the State of Virginia, and in the Eastern District thereof, respectfully shows to the Court, to wit:

1. Petitioner is a corporation, duly created, organized and existing, under and by virtue of the laws of the Commonwealth of Virginia, with its legal principal office in Petersburg, Virginia, in the Eastern District thereof, and is a common carrier by railroad, engaged in the carriage of freight and passengers in interstate and intrastate commerce, operating lines of railroad in the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama, its northern terminus being in the City of Richmond, Virginia.

2. Petitioner's claim does not exceed the sum of $10,000.00 and is founded upon a contract with the United States Government, defendant herein, as hereinafter set out. This action is brought under paragraph 20 of Section 24 of the Judicial Code, March 3, 1911, 36 Stat. 1093 as amended in 28 U. S. Code, Section 41 (20).

3. Defendant is indebted to petitioner in the sum of $4,192.33, being unpaid balance of the sum of $12,630.40 justly due in full by defendant to petitioner for services in carriage by petitioner over its lines of railroad in the year 1942 of various carload shipments transported for defendant from Pembroke, Florida, to Norfolk, Virginia, and from Greenville Piers, N. J., to Charleston, S. C. Petitioner duly rendered bills against defendant for the amount of these charges in the sum of $12,630.40.

4 Defendant has never questioned the correctness of the rates or charges in the sum of $12,630.40 for the services in respect of which the said shipments were made, and on October 2, 1942, defendant paid petitioner the sum of $8,438.07, leaving still owing and unpaid balance of $4,192.33. The said sum of $8,438.07 was accepted by petitioner under protest and as a part payment only, and petitioner subsequently rendered its bill to defendant for the balance of the unpaid charges which defendant has withheld and which defendant still fails and refuses to pay in whole or in part.

4. Petitioner attaches to this petition, and makes a part hereof, a statement marked "Exhibit A," showing each shipment included in the claim and details of the transportation service performed as aforesaid, including references to Government accounting offices, settlements by Government checks, check numbers, receipt of Government checks in payment on account as aforesaid, amounts deducted by Government accounting officers, and reference to the lawfully published and effective tariffs filed with the Interstate Commerce Commission showing the freight rates applicable to the transportation of the shipments involved.

5. Petitioner avers that the rates and charges set forth upon said "Exhibit A" and billed against the United States Government are the correct rates and charges currently on file with the Interstate Commerce Commission and applicable on said shipments shown thereon and moving over its line of railroad.

6. Petitioner has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government; and plaintiff alleges that it has made no assignment or transfer of the aforesaid claims or balance of said indebtedness or any part thereof or interest therein.

Wherefore petitioner prays for judgment or decree against the United States of America for the sum of $4,192.33 and for such other and further relief to which it may be entitled.

5 ATLANTIC COAST LINE RAILROAD COMPANY,
*Petitioner,*

By (S.) Thomas W. Davis,
THOMAS W. DAVIS,
*Wilmington, N. C.*

(S.) J. M. Townsend,
J. M. TOWNSEND,
*Petersburg, Va.*

(S.) Collins Denny, Jr.
COLLINS DENNY, JR.,
*Richmond, Va.*
*Counsel for Petitioner.*

[*Duly sworn to by R. J. Doss, jurat omitted in printing.*]

A. C. L. R. R. Co. Bill No. 34556, 10/15/42. Government Bill of Lading No. DA-TPS 241037, 7/24/42. Origin—Tembroke, Fla. Shipper—Pembroke Chemical Company. Consignee and Destination—British Ministry of War Pransport. Notify Hampton Road Norfolk Freight Forwarders, Norfolk, Va. Route—A. C. L. R. R. direct. Commodity—Pebble Phosphate Rock. Authority for rates: Freight: A. C. L. Phosphate Rock Tariff, F. T. No. 91-27 A, I. C. C. B 3022. Wharfage and Handling: SFTB Port Charges Tariff, F. T. 326 F, I. C. C. No. 654. Alt. Agt. C. A. Spaninger's Tariff of Increased Rates and Charges No. X-148, I. C. C. 765.

| Car initials and number | Weight in pounds | Weight in tons 2,240 pounds | Weight in tons 2,000 pounds | Rates | | Charges | | | Amount paid | Date paid | Government check No. | Balance due |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Freight | Wharfage and handling | Freight | Wharfage and handling | Total | | | | |
| Sou 20762 | 121,200 | 54,107 | 60,660 | [1] $5.48 | [2] 81¢ NT | $296.50 | $49.09 | | | | | |
| KCS 17469 | 111,100 | 49,598 | 55,550 | | | 271.80 | 45.00 | | | | | |
| ACL 21439 | 115,100 | 51,384 | 57,550 | | | 281.58 | 46.61 | | | | | |
| PRR 79604 | 107,900 | 48,169 | 53,950 | | | 263.97 | 43.7[illegible] | | | | | |
| NYC 102827 | 115,800 | 51,696 | 57,900 | | | 283.29 | 46.98 | | | | | |
| NYC 181777 | 111,100 | 49,598 | 55,550 | | Wfg. 58¢ | 271.80 | 45.00 | | | | | |
| BS346 | 116,500 | 52,009 | 58,250 | | Hdlg. 23¢ | 285.01 | 47.18 | | | | | |
| Wab 83213 | 82,200 | 36,696 | 41,100 | | | 201.09 | 33.29 | | | | | |
| PRR 77665 | 112,300 | 50,134 | 56,150 | | 81¢ | 274.73 | 45.48 | | | | | |
| ACL 21094 | 117,600 | 52,500 | 58,800 | | | 287.70 | 47.63 | | | | | |
| CMO 21580 | 118,200 | 51,428 | 57,600 | | | 281.83 | 46.65 | | | | | |
| L&N 91194 | 116,700 | 52,098 | 58,350 | | | 285.49 | 47.26 | | | | | |
| | 1,342,700 | 599,417 | 671,350 | | | 3,284.79 | 543.79 | $3,838.58 | $589.05 | 11/9/42 | 72950 | $3,239.53 |

[1] Per ton of 2,240 pounds.
[2] Per ton of 2,000 pounds.

A. C. L. R. R. Co. Bill No. 36667, 12/5/42. Government Bill of Lading No. DA-TPS 261514, 6/1/42. Origin—Greenville Piers, N. J. (Takes New York rate). Shipper—J. D. Barry, Jr. as to car PRR 862821; S. D. Bennett as to all other cars. Consignee and Destination—British Ministry of War Transport—Iron and Steel Division, c/o Carolina Shipping Co., A/C U. S. Treasury Department, Charleston, S. C. Route—PRR, Potomac Yard, Va., R. F. & P,

Richmond, Va., and A. C. L. Commodity—Sheet Steel. Freight: T. L. T. B. Manufactured Iron and Steel Tariff F. T. No. 128 A., Agent W. S. Curlett's I. C. C. No. A 640. Wharfage and Handling: S F. T. B. Port Charges Tariff F. T. 326 F, I. C. C. No. 654. Agent W. S. Curlett's Tariff of Increased Rates and Charges No. X 148, I. C. C. A 742.

| Car initials and number | Weight in pounds | Weight in tons 2,240 pounds | Weight in tons 2,000 pounds | Rates | | Charges | | | Amount paid | Date paid | Government check No. | Balance due |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Freight | Wharfage and handling | Freight | Wharfage and handling | Total | | | | |
| PRR 355982 | 99,680 | | 49,990 | 56¢ cwt. | 81¢ NT | $55s. 21 | $40. 37 | | | | | |
| PRR 862821 | 118,290 | | 59,145 | | | 602. 42 | 47. 90 | | | | | |
| PRR 345979 | 120,200 | | 60,100 | | | 673. 12 | 48. 68 | | | | | |
| PRR 318431 | 118,840 | | 59,420 | | | 665. 50 | 48. 13 | | | | | |
| PRR 882460 | 93,820 | | 46,910 | | | 525. 39 | 38. 00 | | | | | |
| PRR 323.24 | 119,870 | | 59,935 | | | 671. 27 | 48. 55 | | | | | |
| PRR 288188 | 119,130 | | 59,565 | | | 667. 13 | 48. 25 | | | | | |
| PRR 355679 | 119,540 | | 59,770 | | | 669. 42 | 48. 42 | | | | | |
| PRR 823697 | 118,080 | | 59,040 | | | 661. 25 | 47. 82 | | | | | |
| PRR 283739 | 120,670 | | 60,335 | | | 675. 75 | 48. 87 | | | | | |
| PRR 822884 | 99,790 | | 49,895 | | | 558. 82 | 40. 42 | | | | | |
| PRR 295891 | 99,400 | | 49,700 | | | 556. 64 | 40. 26 | | | | | |
| PRR 852878 | 118,440 | | 59,220 | | | 663. 26 | 47. 97 | | | | | |
| | 1,465,750 | | 733,025 | | | 8,208. 18 | 593. 64 | $8,801. 82 | $7,848. 02 | 2/15/43 | 23070 | $952. 80 |

SUMMARY

| | Balance due |
|---|---|
| A. C. L. bill No.: | |
| 34556 | $3,239. 53 |
| 36367 | 952. 80 |
| | 4,192. 33 |

WILMINGTON, N. C.,
*April 3, 1944.*

13 In United States District Court

*Reply to amended answer and counterclaim of defendant*

Filed Sept. 1st, 1944

Petitioner, for reply to the counterclaim filed by the defendant herein, says:

1. Answering paragraph 4 of the counterclaim, petitioner admits that in or about August and September, 1941, petitioner billed the defendant for the amount of $16,909.20 for freight on acid phosphate and phosphate rock shipped on commercial bills of lading, which were afterwards changed to Government bills of lading, from East Tampa, Agricola, Pierce and Brewster, Florida, consigned to the British Ministry War Transport, care of E. H. Buck, Wallace S. Building, Tampa, Florida, and that said freight charges were computed on the commercial rate.

2. Answering the allegations of Paragraph 5, petitioner admits that defendant paid the bills in the full amount claimed. The other allegations of said paragraph are denied.

3. The allegations of Paragraph 6 are denied.

4. Answering the allegations of Paragraph 7, petitioner admits that the defendant deducted the sum of $3,239.53 due petitioner on Bill No. 34556 and paid petitioner only the sum of $589.05. The other allegations of said Paragraph are denied.

5. Answering the allegations of Paragraph 8, petitioner admits that in or about September 1941 petitioner billed defendant for the amount of $6,322.82 for freight for phosphate rock shipped on commercial or Government bills of lading from Pierce, Florida, consigned to the British Ministry War Transport, care E. H. Buck, Wallace S. Building, Tampa, Florida, and said freight charges were computed at commercial rates.

14 6. Answering the allegations of Paragraph 9, petitioner admits that the defendant paid the bills in the full amount claimed. The other allegations of said Paragraph are denied.

7. The allegations of Paragraph 10 are denied.

8. Answering the allegations of Paragraph 11, petitioner admits that the defendant deducted the sum of $952.80 due on petitioner's Bill No. 36667 and paid petitioner the sum of $7,849.02. The other allegations of said Paragraph are denied.

FURTHER DEFENSE TO COUNTERCLAIM

For further defense to said counterclaim, petitioner says:

1. That the said counterclaim does not set forth facts sufficient to constitute a claim against petitioner, in that the facts set

forth in said counterclaim show upon its face that defendant has already deducted the sum of $1,192.33, the amount claimed in the counterclaim, from the amounts of the bills which petitioner rendered the defendant, and for the amount of which deduction petitioner has brought this suit.

Wherefore, petitioner prays that the said counterclaim be dismissed.

ATLANTIC COAST LINE RAILROAD COMPANY,
*Petitioner,*

By: (Sgd.) Thomas W. Davis,
THOMAS W. DAVIS,
*Wilmington, N. C.,*

(Sgd.) J. M. Townsend,
J. M. TOWNSEND,
*Petersburg, Virginia,*

(Sgd.) Collins Denny, Jr.,
COLLINS DENNY, JR.,
*Richmond, Virginia,*
*Counsel for Petitioner.*

I hereby accept service of the within amended answer.

(Sgd.) JOHN V. COGBILL,
*Asst. U. S. Atty.*

SEPT. 1, 1944.

15 In United States District Court

[Title omitted.]

*Order allowing defendant to withdraw certain pleadings formerly filed, etc.*

Entered and filed September 29, 1944

This day came the United States of America, the defendant, and asks leave of Court to withdraw all pleadings heretofore filed in this cause by it, and substitute for said pleadings its answer filed in Court this day, and by consent of the plaintiff leave is hereby granted to file said answer, and the reply of the plaintiff heretofore filed herein to the defendant's counterclaim shall stand and be received as a reply to the counterclaim filed in the answer of the Government submitted to the Court this day.

(Sgd.) ROBT. N. POLLARD,
*United States District Judge.*

SEPTEMBER 29, 1944.

16 In United States District Court

*Answer*

Filed Sept. 29, 1944

The defendant, by leave of Court had and obtained this date, withdraws the answer, amended answer, and answer to the plaintiff's reply heretofore filed herein and substitutes this answer in the place thereof, and for an answer to the bill of complaint says as follows:

1. It admits the allegations as set out in paragraphs 1 and 2 of the bill of complaint.

2. It admits the allegations as set out in paragraphs 4, 5 and 6 of the bill of complaint.

3. As to paragraph 3 of the bill of complaint, the defendant admits the performance of the service in carriage as alleged, that petitioner duly rendered bills therefor, and that defendant has never questioned the correctness of the rates or charges in the sum of $12,630.40 for the services in respect of which the said shipments were made, and that it has paid petitioner the sum of $8,438.07 thereon which was accepted under protest. By reason of the facts set forth in defendant's counterclaim herein and as specifically authorized by section 322 of the Act of September 18, 1940, 54 Stat. 898, 955, Title 49, U. S. C., Section 66, defendant deducted the amount of $4,192.33, constituting the amount of overpayments to petitioner by defendant from the charges of $12,630.40, and therefore denies that it is indebted to petitioner in the amount of $4,192.33 or any part thereof.

*Counterclaim*

For its counterclaim, defendant alleges:

4. In or about August and September, 1941, petitioners carried on Government bills of lading and billed defendant in
17 the amount of $16,909.20 for freight on acid phosphate and phosphate rock shipped on Government bills of lading from East Tampa, Agricola, Pierce and Brewster, Florida, and consigned to the British Ministry War Transport, care of E. H. Buck, Wallace S. Building, Tampa, Florida. The petitioner's freight charges were computed at the commercial rate without benefit of land-grant deductions.

5. Defendant paid the bills in the full amount claimed, notwithstanding that the said acid phosphate and phosphate rock were intended for export, to promote the defense of the United States, under the lend-lease program, Act of March 11, 1941, Public No.

11 (55 Stat. 31) and Act of March 27, 1941, Public No. 23 (55 Stat. 53). The acid phosphate and phosphate rock were military or naval property of the United States moving for military or naval and not for civil use, and entitled to land-grant deduction (Section 321 (a) of the Transportation Act of 1940, approved September 18, 1940, 54 Stat. 898, 954, Title 49, U. S. C., Section 65 (a)).

6. By means of charges at the commercial rate the defendant overpaid the petitioner the sum of $3,239.53. Petitioners have never repaid any part of such overcharges.

7. The defendant deducted the sum of the said overpayments from the $3,828.58 due on petitioner's bill No. 34556 and Government bill of lading No. DA-TPS 241037, dated July 24, 1942, as thereunto specifically authorized by Section 322 of the Act of September 18, 1940, 54 Stat. 898, 955, Title 49, U. S. C., Section 66, and paid petitioner the balance of $589.05.

8. On or about September 1941, petitioner carried on Government bills of lading and billed defendant in the amount of $6,322.82 for freight for phosphate rock shipped on Government bills of lading from Pierce, Florida, and consigned to the British Ministry War Transport, care of E. H. Buck, Wallace S. Building, Tampa, Florida. The petitioner's freight charges were computed at the commercial rate without benefit of land grant deductions.

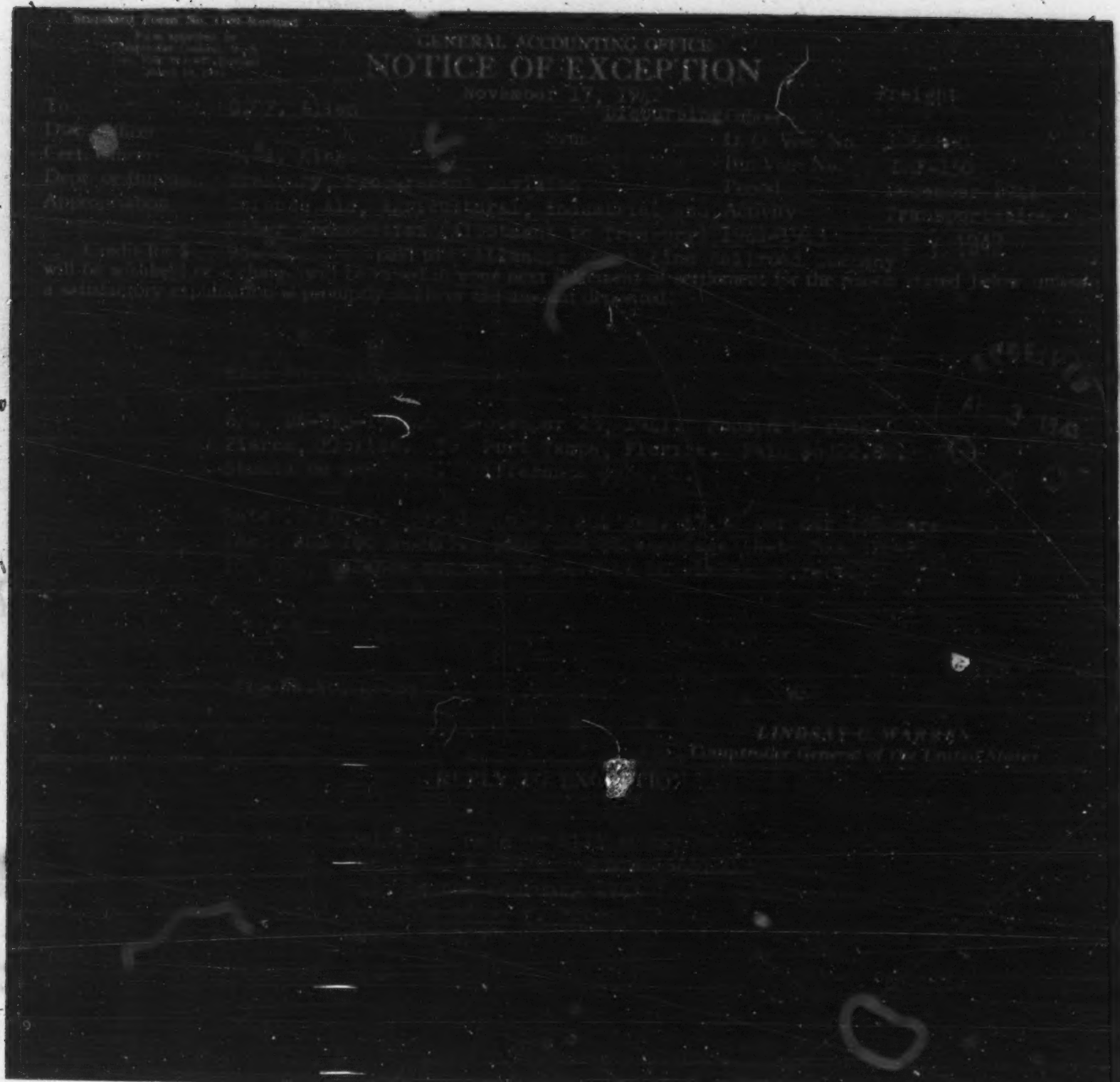
9. Defendant paid the bills in the full amount claim, notwithstanding that the said phosphate rock was intended for export, to promote the defense of the United States, under the lend-lease program, Act of March 11, 1941, Public No. 11 (55 Stat. 31), and Act of March 27, 1941, Public No. 23 (55 Stat. 53). The phosphate rock was military or naval property of the United States moving for military or naval and not for civil use, and entitled to land-grant deductions (Section 321 (a) of the Transportation Act of 1940, approved September 18, 1940, 54 Stat. 898,954, Title 49 U. S. C., Section 65 (a)).

10. By means of charges at the commercial rate the defendant overpaid the petitioner the sum of $952.80. Petitioners have never repaid any part of such overcharges.

11. The defendant deducted the sum of the said overpayments from the $8,801.82 due on petitioner's bill No. 36667 and Government bill of lading No. DA-TPS 261514, dated June 1, 1942, as thereunto specifically authorized by section 322 of the Act of September 18, 1940, 54 Stat. 898, 955, Title 49 U. S. C., Section 66, and paid petitioner the balance of $7,849.02.

Wherefore, defendant prays for judgment on its counterclaim in the amount of $4,192.33, and that said amount be set off against

*EXHIBIT 13.* to stipulation of facts No. 3


GENERAL ACCOUNTING OFFICE

NOTICE OF EXCEPTION

*EXHIBIT 13.* to stipulation of facts No. 1

Standard Form No. 1100-Revised
Form approved by
Gen. Acctg. Office
Gen. Reg. No. 49 - Revised
March 11, 1949

GENERAL ACCOUNTING OFFICE

# NOTICE OF EXCEPTION

September 28, 19[illegible]

To G. F. Allen, Disbursing Officer
Disb. Officer
Cert. Officer G. A. Ring
Dept. or Bureau Treasury, Procurement Division
Appropriation Defense Aid Agricultural Industrial and Other Commodities (All pursuant to Treasury [illegible]

D. O. Vou. No.
Bu. Vou. No.
Period
Activity

Credit for $ 3259.33 paid to Atlantic Coast Line Railroad Company

will be withheld or a charge will be raised in your next statement of settlement for the reason stated below unless a satisfactory explanation is promptly made or the amount deposited.

Bill No. [illegible]

[illegible] TPS 19028[illegible], August 29, 51, [illegible]
Phosphate Rock, Florida-Points to Port Tampa, Florida [illegible]
Paid $15,280.79. Should be $12,[illegible]. Difference

[illegible] gross rate for long [illegible] applicable [illegible]
[illegible] 632) subject [illegible] switching [illegible]
request subject [illegible] reconsideration as noted below.

Origin [illegible] Rate [illegible] Amt. Paid [illegible]

[illegible]

LINDSAY C. WARREN
Comptroller General of the United States

REPLY TO EXCEPTION

Deduction made on Bill No. 34956
Dur. Vou. No. 30807 Pub. No. 272717
Paid in November 19[illegible]
Account G. F. Allen
Symbol [illegible]

*EXHIBIT 11.* to stipulation of facts

Standard Form No. 1081
Form approved
Comptroller General of the U.S.

(Do not write in space below name of Department or establishment and bureau, division, or office, if requested on account classification or indexing)

# Public Voucher for Transportation of Freight or Express

This voucher consists of ____ sheet(s)

(Statement of account must be completely filled in before carrier signs as witness, and there must not be any erasure or alteration unless initialed or explained)

U.S. TREASURY DEPARTMENT, PROCUREMENT DIVISION, WASHINGTON, D.C.
(Department, Bureau, or Establishment)

(Accounting Classification)

Appropriations have been verified by us

SYMBOL

APPROPRIATION — AMOUNT

80-11-3008 Defense Aid, Agricultural, Industrial and Other Commodities (Allocation to Treasury - 941 - 1943.)

PAID BY

(For use of Paying Office)

THE UNITED STATES, DR.

To ATLANTIC COAST LINE RAILROAD COMPANY

Address Wilmington, N. C., 10/3/42

GRATUITOUS INSTRUCTIONS OR REVERSE HEREOF

| BILL OF LADING Date, 19 42 | Number | FROM / TO | CLASS | WEIGHT OR MEASUREMENT | RATE Gross | Net | AMOUNT Dollars | Cts | Items must not be split this space NOTATIONS |
|---|---|---|---|---|---|---|---|---|---|
| 9/3 | IFS 190219 | East Tampa, Fla-Tampa, Fla | S | 909000 | 75ET | | 340 | 88 | |
| 8/29 | (IFS 190232) | Agricola, Fla-Port Tampa, Fla | S | 14830900 | 75LT | | 5558 | 44 | |
| 8/29 | (IFS 190233) | | | | | | | | |
| 9/11 | IFS 190271 | Pierce, Fla- " | S | 7822900 | 75LT | | 2619 | 27 | |
| 9/11 | IFS 190241 | Agricola, Fla- " | S | 8293200 | 75L.T. | | 2774 | 71 | |
| 9/12 | IFS 190247 | Brewster, Fla- " | S | 15617500 | 75LT | | 5829 | 07 | |
| 9/3 | IFS 190218 | East Tampa, Fla-Tampa, Fla | S | 565400 | 75LT | | 211 | 10 | |
| 9/4 | IFS 190220 | " | S | 202000 | 75LT | | 75 | 75 | |

GAO RECEIVED OCT 6 1942 PROCUREMENT DIVISION

*EXHIBIT 1.* to stipulation of facts

Standard Form No. 1058
Form Approved by
Comptroller General U. S.
August 24, 1938

UNITED STATES OF AMERICA No. TPS-190232

Bill to Treasury Department - Procurement Division Washington, D.C.
(Department or Establishment and Bureau or Office)

SEE REVERSE HEREOF

20-111-20026 Defense Aid; Agricultural, Industrial and Other Commodities 1941-43

Inland Traffic Unit Procurement Division Tampa, Fla.

# GOVERNMENT BILL OF LADING

ORIGINAL

Received from SWIFT & CO. FERTILIZER WORKS
(Name of this or Issuing Officer)

by the ATLANTIC COAST LINE RAIL ROAD
(Initial Carrier)

in apparent good order and condition (contents and value unknown), to be forwarded subject to conditions hereof as the property of the hereof, from AGRICOLA, FLA. to PORT TAMPA, FLA.
(Shipping Station) (Destination)

by the said company and connecting lines, there to be delivered in like good order and condition to THE BRITISH MINISTRY OF WAR TRANSPORT c/o E. H. BUCK WALLACE S. BUILDING TAMPA, FLA.

VIA A. C. L.
(Route to destination only when prior transportation interest of the Government is preferred thereby)

| MARKS | NUMBER OF PACKAGES | NUMBER AND KIND OF PACKAGES | DESCRIPTION OF ARTICLES (Special marks and exceptions) | WEIGHTS (Subject to correction) |
|---|---|---|---|---|
| BULK | *** | *** | 67 PORT DUMP- OARS PHOSPHATE ROCK. 10,968,900 Net Lbs as per attached Weigh Master's Report. | 5486.8503 Long Tons |

Report 33

petitioner's claim herein, and that petitioner's complaint be dismissed at his cost.

HARRY H. HOLT, Jr.,
*United States Attorney.*

By: (Sgd.) John V. Cogbill
JOHN V. COGBILL,
*Assistant United States Attorney.*

I hereby certify that a copy of this amended answer was delivered by the undersigned to Collins Denny, Jr., Esquire, counsel of record, Travelers Building, Richmond, Virginia, on the 29th day of September 1944.

(Sgd.) JOHN V. COGBILL,
*Assistant United States Attorney.*

10 — In United States District Court

*Interrogatories addressed to defendant*

Filed December 11, 1944

*To the defendant, United States of America:*

The following interrogatories are addressed by the plaintiff to the defendant, United States of America, which said defendant is requested to answer in writing and under oath:

First. Did the defendant charge the Government of Great Britain with the transportation, freight rates and charges from the stations of Agricola, Tierce and Brewster, Florida to Port Tampa, Florida, paid by it to plaintiff on shipments set out in the pleadings?

Second. If the defendant did not make a specific charge for such transportation, freight rates and charges on said shipments, did the defendant charge the Government of Great Britain, in addition to the cost to it of the goods, a fixed sum or percentage thereof, which included or was intended to include such transportation, freight rates and charges?

Third. If so, state what was such fixed sum or percentage.

(Sgd.) THOS. W. DAVIS,
Per C. D. Jr., *Wilmington, N. C.*

(Sgd.) COLLINS DENNY, JR.,
*Richmond, Virginia.*
*Counsel for Plaintiff.*

Legal service of above interrogatories is hereby accepted this 11th day of December 1944.

(Sgd.) H. H. HOLT, Jr.,
*United States Attorney.*

December 11, 1944.

41 *Exhibit No. 16*

UNITED STATES (SEAL) OF AMERICA

TREASURY DEPARTMENT

WASHINGTON

SEPTEMBER 25, 1944.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed document dated October 1, 1941, with its attachment a list of defense articles authorized for transfer to the United Kingdom by the Secretary of the Treasury) is a true copy of the Transfer Directive No. D-224-T on file in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

[TREASURY SEAL] (S.) (*Signature Undecipherable*),
*Chief Clerk, Treasury Department.*
RHF. 9123. JMD. 9/23.

Treasury Departmental Stock Form 2247.

42 Transfer Directive No. D-224-T.

THE WHITE HOUSE

WASHINGTON

OCT. 1, 1941.

MY DEAR MR. SECRETARY: By my Transfer Directives numbered 44, 63, 80, 82, 92, 97, 104, 111, 118, 127, 136, 149, 158, 179, 180, 199, and 202, dated respectively May 22, June 4, June 18, June 21, June 25, July 5, July 7, July 12, July 18, July 28, July 31, August 13, August 18, August 25, August 25, August 29, and September 4, 1941, I authorized you to transfer to the appropriate officer or representative of His Majesty's Government in the United Kingdom such quantities of the defense articles covered by the requisitions enumerated on the attached table as might become available by September 30, 1941.

I hereby authorize you to transfer to the appropriate officer or representative of His Majesty's Government in the United Kingdom all of the defense articles covered by the requisitions enumerated on the attached table.

I would appreciate it if you would arrange with the Chairman of the British Supply Council in North America for the time, method and other details of the disposition.

Sincerely yours,

FRANKLIN D. ROOSEVELT.

The Honorable THE SECRETARY OF THE TREASURY.

43 Transfer Directive No. D-224-T.
Ref. D. A. A.----------

DEFENSE ARTICLES AUTHORIZED FOR TRANSFER TO THE UNITED KINGDOM BY THE SECRETARY OF THE TREASURY

| Requisition number | Articles | |
|---|---|---|
| | Quantity | Description |
| 1133 | 435,000 short tons | Phosphate rock. |
| 1137 | 50,000 long tons | Chilean Bessemer Copper or Specificable Electro in proportions to be determined. |
| 1345 | 10,000 long tons | Manila hemp, assorted grades. |
| 1367 | 16,000 short tons | Triple Superphosphate—to be packed in 4 ply paper bags of approximately 100 lbs. each. |
| 1437 | 60,000 short tons | Calcined phosphate. |
| 1986 | 17,000 short tons | Chemical Wood Pulp: |
| | | Bleached sulphite (No hardwood pulp to be supplied) to include 6,000 tons for cordite, 1,000 tons for photo-base paper. |
| | 13,000 short tons | Easy bleaching sulphite. |
| | 3,000 short tons | Bleached sulphate. |
| | 3,000 short tons | Semibleached sulphate for cordite. |
| | 50,000 short tons | Kraft Pulp—to include 3,000 tons for cordite. |
| 1987 | 8,000 short tons | Kraft liner board. |
| 1988 | 6,000 short tons | (Approx. 16,000,000 sq. ft.) Hard Boards. |
| | 4,800 short tons | (Approx. 17,000,000 sq. ft.) Insulation Boards. |
| | 2,700 short tons | (Approx. 11,000,000 sq. ft.) Laminated Wallboards. |
| 2016 | 300,000 square feet | Galvanized woven wire gauze 28 swg 14 meshes per lineal inch, 36 inches wide, in rolls of approximately 100 feet. |
| 2110 | 7,000 | Complete sets of 749/742 taper roller bearings, inside diameter 3.3475". |
| 2111 | 40 | Bearings as follows: |
| | 40 | Timken E E 516057/516.122. |
| | 40 | Timken 99.550/99.100. |

44 *Exhibit No. 17*

ASSISTANT COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

B-35781: DEC. 27, 1943.

MR. THOMAS W. DAVIS,
*General Solicitor,*
*Atlantic Coast Line Railroad Company,*
*Wilmington, North Carolina.*

DEAR MR. DAVIS: Reference is made to your letter of August 24, 1943, and, also, to your letter of October 14, 1943, which was

associated upon receipt, with pertinent records in the Claims Division of this office and has just come to my attention, relative to your claims for $4,273.57 in connection with certain shipments of phosphate rock from points in Florida, to Tampa, Florida, descriptions of said shipments being set out in detail in a tabulation transmitted with your letter of August 24. It appears that the shipments in question were made pursuant to the lend-lease program and that you are of the opinion that the commercial charges for transporting this property cannot be subjected to land-grant deductions.

The records indicate that the shipments here concerned consisted of phosphate rock or super-phosphate (concentrated phosphatic fertilizer) shipped by the Phosphate Mining Company, the Swift and Company Fertilizer Works, the American Agricultural Chemical Company, or the American Cyanamid Company, consigned to the British Ministry of War Transport at Tampa, or Port Tampa, Florida. Claims for the transportation services rendered were presented by the Atlantic Coast Line Railroad Company in bills 20458, 21342, and 21847, stated on the basis of full commercial rates without land-grant deduction, and payments of the amounts so claimed by the carrier were made on vouchers 766142, 1088458 and 1068830, respectively, of the October and December, 1941, accounts of G. F. Allen, chief disbursing officer, Treasury Department. In the audit of these accounts there was noted the failure to deduct for land grant in the aggregate amount of $4,273.57 and, accordingly, upon suspension of credit against the chief disbursing officer, that official effected adjustments in voucher 616457, 879797, and 1565180 of his accounts for September and November, 1942, and February, 1943, respectively, through deductions totaling $4,273.57 from amounts otherwise payable to the Atlantic Coast Line Railroad Company on its bills 29892, 34556, and 36667. Thereafter, the carrier's Auditor of Freight Receipts presented claims to this office in the form of letters dated February 3, 1943, file 3972–A, and July 3, 1943, file 3536–T, for the aggregate amount so deducted in adjustment, contending, in effect, that the carrier did not consider the property comprising the subject shipments to be such as to come within the exception to the requirement for payment of full commercial charges as contemplated by section 321 of the Transportation Act of 1940, 54 Stat. 898, 954, which provides:

"Notwithstanding any other provision of law, but subject to the provisions of section 1 (7) and 22 of the Interstate Commerce Act, as amended, the full applicable commercial rates, fares, or charges shall be paid for transportation by any common carrier

subject to such Act of any persons or property for the United States, or on its behalf, except that the foregoing provision shall not apply to the transportation of military or naval property of the United States moving for military of naval and not for civil use * * *."

and that, therefore, the commercial transportation charges otherwise applicable are not subject to deduction for land grant. These claims now are pending in this office under numbers 719945, 728233 and 728234.

The matter here concerned is similar to that considered in letter of October 12, 1943, B-29861, addressed to the Auditor of Revenues of the Seaboard Air Line Railway, a copy of which is enclosed for your information, which related to land-grant deductions from commercial transportation charges otherwise payable for transporting certain shipments of phosphate rock in 1941 from mines in Florida to Tampa, Florida, over lines of the Seaboard Air Line Railway, consigned to the British Ministry of War Transport.

As pointed out in that letter the administrative offices concerned have reported that they regard the transportation of "defense articles" purchased under the lend-lease program as transportation of military property; also, as was likewise there stated, it has been noted that two suits involving the question of the right of the United States to deduction for land grant from charges for the transportation of "defense articles" shipped pursuant to the lend-lease program have been filed against the United States recently by the Southern Pacific Company—one in the Court of Claims of the United States and one in the United States District Court for the Eastern District of Kentucky. In view of this situation, this office, in the absence of a judicial determination of the matter, would not be justified in modifying the adjustments here concerned, which were effected on the basis that the shipments consisted of "military or naval property of the United States moving for military or naval and not for civil use." Accordingly, instructions will be given for the disallowance of the three claims above mentioned in order that the records of this office may show that the matter has been disposed of here.

Respectfully,

(Signed) FRANK L. YATES,
*Assistant Comptroller General*
*of the United States.*

Enclosure.

46 In United States District Court

*Answers to interrogatories addressed to defendant*

Filed January 4th, 1945

Defendant, for his answer to Interrogatories proposed by Plaintiff, submits the following:

First. Defendant did not charge and has not charged the Government of Great Britain with the transportation, Freight rates and charges referred to in this Interrogatory, in that it has not demanded, received or contracted for repayment by Great Britain of the same, or any part thereof. These costs were paid out of lend-lease appropriations. The defendant maintains for its own purposes records showing the procurement and transportation costs and other expenses of defense aid on each lend-lease requisition. Those records include the said freight charges among the total cost and expenses borne by defendant against United Kingdom requisitions.

Second and third. In view of the answers to the First Interrogatory, no answer to the Second and Third Interrogatories is necessary.

UNITED STATES OF AMERICA,
(Sgd.) Francis M. Shea,
FRANCIS M. SHEA,
*Assistant Attorney General.*

[*Duly sworn to by Leonard W. A'Hearn; jurat omitted in printing.*]

I hereby certify that I have delivered copy of Answers to Interrogatories to Collins Denny, Jr., Esquire, of counsel for the plaintiff, in person.

(Sgd.) JOHN V. COGBILL,
*Assistant United States Attorney.*

JANUARY 4, 1945.

48 In United States District Court

Civil Action No. 306

ATLANTIC COAST LINE RAILROAD COMPANY, PETITIONER

*vs.*

THE UNITED STATES OF AMERICA, DEFENDANT

*Memorandum opinion of the court*

Filed April 21st, 1945

In this case the Court is called upon to determine the freight rate applicable under Section 321 (a) of the Transportation Act

of 1940 (Title 49, Section 65 (a), U. S. C. A.) to certain shipments of phosphate rock or pebble phosphate rock which were being transported by the petitioner under Government bills of lading to Great Britain under the Lend-Lease Act. The Transportation Act of 1940 provides that the full applicable commercial rates shall be paid for the transportation by any common carrier of property of the United States except upon "the transportation of military or naval property of the United States moving for military or naval and not for civil use." The petitioner, Atlantic Coast Line Railroad Company, contends that the rate applicable to said shipments is the usual commercial rate and the defendant, United States of America, contends that the petitioner is entitled to charge and receive only the rates commonly known as land grant rates. If the contention of the petitioner is upheld, the cross-claim filed by the defendant should be dismissed and judgment entered for the petitioner on the claim asserted in the complaint. If the contention of the defendant is sustained, judgment for the defendant should be entered on the cross-claim.

The court finds the facts to be those facts stipulated between the parties and included in a stipulation dated November 15, 1944, and duly filed on December 20, 1944, as a stipulation in this action. Said stipulated facts are as follows:

1. The defendant admits all of the allegations in the complaint, except the allegation that it is indebted to the plaintiff in the amount of $4,192.33. Therefore, the facts to be stipulated, other than those contained in the complaint, affect the defendant's counterclaim.

49 2. On August 29, 1941, and September 12, 1941, a number of cars of phosphate rock or pebble phosphate rock moved on five Government bills of lading, DA-TPS 190232, 190233, 190234, 190241, and 190247, respectively, from Agricola, Pierce, and Brewster, Florida, to Tampa, Florida, over the plaintiff's railroad, consigned to the British Ministry of War Transport, all of which more fully appears from copies thereof attached hereto, as a part hereof, marked "Exhibits 1, 2, 3, 4, and 5."

3. Said phosphate rock mentioned in paragraph 2 above was procured by the defendant under four contracts, as follows: Contract DA-TPS 458, dated July 21, 1941; contract DA-TPS 973, dated August 11, 1941; contract DA-TPS 452, dated July 21, 1941; and contract DA-TPS 971, dated August 11, 1941, bids for which last named contract were sent out by telegram. Copy of each of said contracts and bids, including telegraphic bid, is attached hereto, as a part hereof, marked "Exhibits 6, 7, 8, and 9."

4. On September 23, 1941, a number of cars of phosphate rock or pebble phosphate rock moved on Government Bill of Lading DA-TPS 190246 from Pierce, Florida, to Tampa, Florida, over the plaintiff's railroad, consigned to the British Ministry of War Transport, as more fully appears from a copy thereof, attached hereto as a part hereof, marked "Exhibit 10."

5. Said phosphate rock was procured by the United States under Contract DA-TPS 452, dated July 21, 1941 (Exhibit 8).

6. The plaintiff Company duly rendered bills based on commercial rates for these shipments and the defendant paid them. Copies of said bills are attached hereto as a part hereof, marked "Exhibits 11 and 12."

7. Upon audit of said bills by the General Accounting Office, a "Notice of Exception" in each instance was issued suspending credit in the accounts of the disbursing officer for the amounts shown in said Notices, copies of which are attached hereto as a part hereof, marked "Exhibit 13." The aggregate credit thus suspended was $4,192.33, the amount for the recovery of which the plaintiff sues.

8. On October 12, 1943, said Comptroller General of the United States made a ruling B-29861 concerning sundry deductions from Seaboard Air Line Railway charges account land grant rates as applied to shipment of phosphate rock, a copy of which ruling is attached hereto as part hereof, marked "Exhibit 14." Said ruling refers to a communication from the Lend-Lease Administration, which is a letter from Honorable E. R. Stettinius, Jr., Lend-Lease Administrator, to Honorable Roy F. Hendrickson, Deputy 50 Food Administrator, dated September 21, 1943, a copy of which is attached hereto as a part hereof, marked "Exhibit 15." (See, also, a copy of the President's Directive of October 1, 1941, to which reference is made, and which is made a part hereof and attached hereto, marked "Exhibit 16.")

9. On December 27, 1943, the Comptroller General of the United States made a ruling B-35781 concerning certain deductions from bills rendered by the plaintiff, attached to which was his ruling B-29861 concerning sundry deductions made by him from Seaboard Air Line Railway bills. A copy of said ruling is attached hereto, marked "Exhibit 17," and made a part hereof.

10. The British Ministry of War Transport is an agency which is the duly authorized representative in the United States of His Majesty's Government. All commodities covered by the bills of lading mentioned in the pleadings and in this stipulation were exported to Great Britain under the Lend-Lease Act of March 11, 1941, Public No. 11 (55 Stat. 31), and Act of March 27, 1941, Public No. 23 (55 Stat. 53).

11. The Seaboard Air Line Railway is the only land grant railroad company in Florida over whose line land grant rates apply from Agricola, Pierce, and Brewster, Florida, and said Seaboard Air Line Railway has filed with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have against the United States to lands, interest in lands, compensation or reimbursement on account of lands or interest in lands, which had been granted, claimed to have been granted, or which it is claimed to have been granted, to such carrier or any such predecessor in interest under any grant to such carrier or such predecessor in interest as aforesaid, and such release was filed within one year from the date of the enactment of the Transportation Act of 1940. The Department of Interior approved the said release or releases filed by the Seaboard Air Line Railway with the Department of Interior, as shown by Federal Register, Vol. 7, 136, page 5319, which is made a part hereof. The stations named above are on the Seaboard Air Line Railway and are located on the original Florida Central and Peninsular Railroad Company referred to in said certificate issued by the Land Grant Office of the Department of Interior, June 29, 1942, and set forth in said Register mentioned above.

12. The plaintiff is not a land grant railroad. It has, however, entered into equalization agreement with the defendant, dated April 14, 1938 (May 2, 1938), a copy of which is hereto attached, as a part hereof, marked "Exhibit 18." The stations of Agricola, Pierce, and Brewster are stations on both the Atlantic Coast Line Railroad Company and Seaboard Air Line Railway.

13. It is further stipulated and agreed, subject to objection as to relevancy or competency of the evidence, as follows:

The shipments involved in the counterclaim were "defense articles" as defined in the Lend-Lease Act.

When a requisition is made by any country, the defense of which the President deems vital to the defense of the United States, such requisition is carefully considered and scrutinized. It is then accepted, modified, or rejected in accordance with the determination by the President or his duly authorized representative, such as Lend-Lease Administrator or Foreign Economic Administration, as to whether or not shipment of the materials requisitioned will promote the defense of the United States in accordance with the provisions of the Lend-Lease Act.

In 1941 at the times the requisitions for the materials involved in the counterclaim were made, approved, and authorized; and the shipments moved, there was a serious food situation in Great Britain, by virtue of the fact that Great Britain, normally a heavy

food importing nation, was cut off from many sources of supply. Imports were further restricted by shortage of shipping. Great Britain, therefore, found it necessary to revise her agricultural practices in order to intensify the production of food for direct human consumption. It was necessary to put into production a large acreage of land normally not used for the production of food for direct human consumption, and phosphate fertilizers had to be imported and distributed to effectuate this revised agricultural program. The shipments of phosphage rock and superphosphate comprised a part of that program. Great Britain instituted controls which resulted in the proper use and distribution of said materials to accomplish this purpose, for which they were requisitioned, and authorized under the Lend-Lease Act. In 1941, the United States was the only practical source from which Great Britain could acquire such materials.

52 It is further stipulated and agreed that either party may refer to the official published reports made to Congress by or on behalf of the President pursuant to the term of the Lend-Lease Act, and to rulings of the Comptroller General, without objection, and without their formal introduction in evidence. Dated November 15, 1944.

The facts stipulated are not in any material respect different from the facts in a suit instituted in the Norfolk Division of this Court previous to the institution of this action. In that case (Legh R. Powell, Jr., et al, as Receivers of the Properties and Assets of Seaboard Air Line Railway Company, Petitioners, v. The United States of America, Defendant) Judge Sterling Hutcheson has rendered a written opinion on March 24, 1945. It seems to me that the reasoning of Judge Hutcheson in that case is sound and that the conclusion reached by him is correct. Under the stipulated facts and on authority of that case I conclude the law of this case to be that the phosphate rock or pebble phosphate rock which was being transported upon Government bills of lading was not military or naval property of the United States at the time it was being transported and was not then moving for military or naval use but was moving for civil use within the meaning of Section 321 (a) of the Transportation Act of 1940 and that therefore the freight rates applicable to such shipments are the full commercial rates.

An order may be presented after reasonable notice dismissing the counterclaim asserted by the defendant and rendering judgment for the petitioner in the sum demanded in the complaint.

(Sgd.) ROBT. N. POLLARD,
*United States District Judge.*

APRIL 21, 1945.

53 In United States District Court

Civil Action No. 306

ATLANTIC COAST LINE RAILROAD COMPANY, PETITIONER

*vs.*

THE UNITED STATES OF AMERICA, DEFENDANT

*Order entering judgment in favor of petitioner and dismissing defendant's counterclaim*

Entered and filed May 4th, 1945

This day came the parties, by their attorneys, and the Court having fully considered the questions arising upon the pleadings and proofs and arguments of counsel thereon, all facts having been stipulated by the parties in writing, filed in the Cause, and the Court, in its written opinion, filed herein on April 21, 1945, having set forth the specific findings of fact and its conclusions upon all questions of law involved in this case and the Court being of opinion that the petitioner is entitled to recover and that the defendant is not entitled to recover on its counterclaim, doth so decide. Accordingly, the Court doth adjudge, order and decree that the said Atlantic Coast Line Railroad Company do recover of the United States of America the sum of four thousand, one hundred and ninety-two dollars and thirty-three cents ($4,192.33) with interest at the rate of four per cent per annum from the date hereof until paid and its cost, as provided by law. The Court doth further adjudge, order and decree that the counterclaim filed by the defendant is hereby dismissed and that this case be removed from the docket.

(Sgd.) ROBT. N. POLLARD,
*United States District Judge.*

MAY 4, 1945.

58 In the United States Circuit Court of Appeals for the Fourth Circuit

No. 5428

UNITED STATES OF AMERICA, APPELLANT

*vs.*

ATLANTIC COAST LINE RAILROAD COMPANY, A CORPORATION, APPELLEE

APPEAL from the District Court of the United States for the Eastern District of Virginia, at Richmond

September 8, 1945, the transcript of record is filed and the cause docketed.

September 10, 1945, the appearance of Harry H. Holt, Jr., U. S. Attorney, is entered for the appellant.

September 12, 1945, the appearance of Thos. W. Davis, J. M. Townsend and Collins Denny, Jr., is entered for the appellee.

October 2, 1945, petition of appellee for permission to file brief in excess of fifty printed pages is filed.

Same day, order granting special permission to appellee to file brief in excess of fifty printed pages but not exceeding ninety printed pages is filed and entered.

October 11, 1945, the appearance of John F. Sonnett, Hubert H. Margolies and Frederick Chait is entered for the appellant.

October 12, 1945, petition of appellant for permission to file brief in excess of fifty printed pages is filed.

59 Same day, order granting special permission to appellant to file brief in excess of fifty printed pages but not exceeding one hundred printed pages is filed and entered.

October 16, 1945, brief and appendix on behalf of the appellant are filed.

October 29, 1945, brief on behalf of the appellee is filed.

*Argument of cause*

November 7, 1945 (November term, 1945), cause came on to be heard before Soper and Dobie, Circuit Judges, and Barksdale, District Judge, and was argued by counsel and submitted:

60 United States Circuit Court of Appeals,
Fourth Circuit

No. 5428

UNITED STATES OF AMERICA, APPELLANT

*vs.*

ATLANTIC COAST LINE RAILROAD COMPANY,
(CORPORATION, APPELLEE

Appeal from the District Court of the United States for the Eastern District of Virginia, at Richmond

(Argued November 7, 1945.—Decided December 13, 1945)

Before SOPER and DOBIE, Circuit Judges, and
BARKSDALE, District Judge

*Opinion*

Filed December 13, 1945

Hubert H. Margolies, Attorney, Department of Justice,
61 (John F. Sonnett, Assistant Attorney General; Harry H.

Holt, U. S. Attorney; John V. Cogbill, Assistant U. S. Attorney, Frederick Chait and Irvin M. Gottlieb, Attorneys, Department of Justice, on brief) for Appellant; and Thomas W. Davis (J. M. Townsend and Denny, Valentine & Davenport on brief) for Appellee.

DOBIE, Circuit Judge:

The facts in this case and the question arising on these facts differ in no essential respects from the facts and the question involved in No. 5406, United States v. Powell and Anderson, Receivers of the Seaboard Air Line Railway Company, decided by us this day. The two causes, though not formally consolidated, were argued before us together.

For the reasons set out in our opinion in the Seaboard case (No. 5406), the judgment of the District Court is affirmed.

63

United States Circuit Court of Appeals.
Fourth Circuit

No. 5428

UNITED STATES OF AMERICA, APPELLANT

*vs.*

ATLANTIC COAST LINE RAILROAD COMPANY, A CORPORATION, APPELLEE

Appeal from the District Court of the United States for the Eastern District of Virginia

*Judgment*

Filed and Entered December 13, 1945

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Virginia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

MORRIS A. SOPER,
*U. S. Circuit Judge.*
ARMISTEAD M. DOBIE,
*U. S. Circuit Judge.*
A. D. BARKSDALE,
*U. S. District Judge.*

On another day, to wit, January 14, 1946, the mandate of this Court, in this cause, is issued and transmitted to the District Court of the United States for the Eastern District of Virginia, at Richmond, in due form.

64 Supreme Court of the United States

[Title omitted.]

*Stipulation*

Subject to this Court's approval, it is hereby stipulated and agreed, by and between the attorneys for the respective parties hereto, that for the purpose of the petition for a writ of certiorari the printed record may consist of the following:

1. Appendix B to brief for appellant in the United States Circuit Court of Appeals for the Fourth Circuit.

2. The proceedings had before the United States Circuit Court of Appeals for the Fourth Circuit.

It is further stipulated and agreed that petitioner will cause the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit to file with the Clerk of the Supreme Court a complete certified transcript of the record on appeal in the Circuit Court of Appeals for the Fourth Circuit; and that, in the event the petition for writ of certiorari is granted, the printed record shall consist of the proceedings in the Circuit Court of Appeals for the Fourth Circuit and such portions of the complete transcript of record on appeal in that court as the parties may designate.

It is further stipulated and agreed that either of the
65 parties hereto may refer in his brief to the record filed in the Supreme Court of the United States.

Dated this 4th day of March, 1946.

J. Howard McGrath,
J. Howard McGrath,
*Solicitor General,*
*Attorney for Petitioner.*
Thos. W. Davis,
J. M. Townsend,
Collins Denny, Jr.
*Attorneys for Respondent.*

66 In United States Circuit Court of Appeals

*Order authorizing clerk to use original transcript of record in making up record for use in the Supreme Court of the United States on application for writ of certiorari*

For reasons appearing to the court, it is ordered that the Clerk of this Court, in making up certified transcript of records for use in the Supreme Court of the United States on applications for writs of certiorari to this Court, be, and he is hereby, authorized to use and incorporate therein the original transcripts of records filed in this Court. The said original transcripts of records shall be returned to this Court after the cases are finally disposed of in the said Supreme Court.

Further ordered that a copy of this order be incorporated in said certified transcripts of records.

JOHN J. PARKER,
*Senior Circuit Judge.*

JANUARY 9th, 1941.

67 [Clerk's certificate to foregoing transcript omitted in printing.]

68 Supreme Court of the United States

[Title omitted.]

Order allowing certiorari

*Order allowing certiorari*

Filed April 29, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.

69 In the Supreme Court of the United States

*Stipulation*

Filed Aug. 7, 1946

Subject to this Court's approval, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that for the consideration of this case on the writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit

granted April 29, 1946, the printed record may consist of the following:

1. The material contained in the printed transcript of record (consisting of 11 pages) used for the purposes of the petition for writ of certiorari herein.

2. The following additional portions of the complete transcript of the record on appeal to the Circuit Court of Appeals:

a. Respondent's petition in the District Court of the United States for the Eastern District of Virginia, and exhibit thereto.

b. Order allowing defendant to withdraw certain pleadings formerly filed, etc., dated September 29, 1944.

c. Petitioner's answer and counterclaim, filed September 29, 1944.

70 d. Respondent's reply to amended answer and counterclaim, filed September 1, 1944.

e. Interrogatories addressed to defendant.

f. Answer to Interrogatories addressed to defendant.

g. "Exhibit 1" to the Stipulation of Facts (filed December 20, 1944), consisting of a copy of a bill of lading, DA–TPS-190232, which is stipulated and agreed to be typical of the bills of lading covering the shipments involved in the above-entitled case.

h. "Exhibit 11" to the Stipulation of Facts, consisting of a copy of a bill rendered by respondent, which is stipulated and agreed to be typical of the bills rendered by respondent for transportation charges on the shipments involved in the above-entitled case.

i. "Exhibit 13" to the Stipulation of Facts, consisting of "Notices of Exception" issued by the General Accounting Office.

j. "Exhibit 16" to the Stipulation of Facts, consisting of a copy of the President's Directive of October 1, 1941.

k. "Exhibit 17" to the Stipulation of Facts, consisting of a copy of the Comptroller General's ruling B–35781, dated December 27, 1943.

3. This stipulation.

It is further stipulated and agreed that in the briefs of either party reference may be made to any portion of the transcript of record which is not included in the printed record prepared as aforesaid.

Dated this first day of August 1946.

J. Howard McGrath,
J. Howard McGrath,
*Solicitor General,*
*Attorney for Petitioner.*

Thos W. Davis,
*Attorney for Respondent.*